IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8134 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRITBHAI RAMESHBHAI SHAH

Versus

REGIONAL TRANSPORT OFFICER

Appearance:

MR DK NAKRANI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/09/2000

ORAL JUDGEMENT

Rule. Mr KT Dave waives service of Rule for the respondents.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 7.7.2000 passed by the Commissioner of Transport, Gujarat State in Tax Appeal No. 12/2000.

3. The petitioner's appeal has been dismissed only on the ground that the petitioner had challenged the

notice dated 8.2.2000 in the recovery proceedings under Section 200 of the Bombay Land Revenue Code, but the petitioner had not challenged the demand notice dated 9.12.1999.

4. At the hearing of the petition, Mr Nakrani, learned counsel for the petitioner has produced alongwith the draft amendment a copy of the appeal memo which specifically states that the appeal was directed against the orders dated 8.2.2000, 10.3.1999 and 9.12.1999 passed by the Regional Transport Officer, Baroda in the matter of vehicle bearing No. GT-6 U 9877. Prayer clause (A) in para 9 of the appeal memo also read as under :-

> "The Hon'ble Authority may be pleased to quash and set aside the order dated 9.12.99 as per Annexure A and order dated 8.2.2000 as per Annexure B in the interest of justice."

5. In view of the above, it is clear that the petitioner had preferred appeal against the demand notice dated 9.12.1999 and that, therefore, the appellate authority was duty bound to entertain the appeal on merits and decide the same in accordance with law.

6. At this stage, the learned counsel for the petitioner further submits that the authority is required to follow the principles laid down by the Hon'ble Supreme Court in State of Gujarat vs. Kaushikbhai K Patel, 2000 AIR SCW 2337 wherein the Hon'ble Supreme Court has laid down that for considering the application for refund of the vehicle tax what is required to be considered by the authority is the fact whether the vehicle was actually used or not and not whether the non-use was for reasons beyond the control of the applicant.

7. The petition is allowed. The impugned order dated 7.7.2000 is quashed and set aside and the Commissioner of Transport shall hear the petitioner's Tax appeal No. 12/2000 after giving the petitioner an opportunity of being heard and decide the matter is accordance with law as stated above as expeditiously as possible and if the petitioner co-operates the appeal may preferably be decided within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with costs.

September 28, 2000 (M.S. Shah, J.)
sundar/-